U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 30 December 2005

In the Matter of:

OSCAR L. BRYANT,
Claimant,

v.

JIM WALTER RESOURCES, INC.,
Employer,

and

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS,
Party-in-Interest.

CASE NO: 2004 BLA 5039

Appearances:[1]

Roderick Graham, Esq.
For the Claimant.

Thomas J. Skinner, IV, Esq.
For the Director.

Before: EDWARD TERHUNE MILLER
Administrative Law Judge

DECISION AND ORDER – DENIAL OF BENEFITS

This proceeding arises from a claim for benefits under the Black Lung Benefits Act, 30 U.S.C. §§ 901-945 ("the Act") and the regulations issued thereunder, which are found in Title 20 of the Code of Federal Regulations. Regulations referred to herein by part or section only are contained in that Title.

Benefits under the Act are awarded to coal miners who are totally disabled within the meaning of the Act due to pneumoconiosis, or to the survivors of coal miners whose death was

[1] The Director, Office of Workers' Compensation Programs, was not present nor represented by counsel at the hearing.

due to pneumoconiosis. Pneumoconiosis, commonly known as black lung, is a dust disease of the lungs resulting from coal mine dust inhalation.

A formal hearing was held in Birmingham, Alabama, on November 18, 2004. At that time, all parties were afforded a full opportunity to present evidence and argument as provided in the Act and the regulations. Director's Exhibits 1-24, Claimant's Exhibit 1 and Employer's Exhibits 1-2 were admitted into evidence at the hearing. (Tr. 7, 47-48).[2] Claimant's Exhibit A and Employer's Exhibit A, their respective evidence summary forms, were identified at the hearing. (Tr. 48). Employer and Claimant submitted post-hearing briefs and the record is closed. (Tr. 49).

Issues

1. Whether the Miner has pneumoconiosis as defined by the Act and the regulations?

2. Whether, if proved, the Miner's pneumoconiosis arose out of coal mine employment?

3. Whether the Miner is totally disabled?

4. Whether the Miner's disability, if proved, is due to pneumoconiosis?

5. Whether the evidence establishes a change in a condition of entitlement pursuant to § 725.309?

Findings of Fact and Conclusions of Law

Procedural Background

The Miner, Oscar L. Bryant, filed his first claim for benefits on May 6, 1991, which was denied on January 4, 1994. The denial was affirmed on appeal on August 22, 1994. (DX 1). Claimant filed a second claim on December 23, 1996. (DX 2). On September 17, 1997, the District Director, Office of Workers' Compensation Programs, denied benefits, and that denial became final. (DX 2). On February 7, 2000, Claimant filed a third claim for benefits. He was notified by letter dated May 18, 2000, that he did not qualify for benefits. On or about July 14, 2000, Claimant abandoned the claim. (DX 3).

The instant claim was filed on August 23, 2002. (DX 5). A Proposed Decision and Order Denying Benefits was issued by the District Director on July 25, 2003. (DX 20). Claimant requested a formal hearing by letter dated August 7, 2003, and the claim was referred to the Office of Administrative Law Judges on October 3, 2003. (DX 21, 24).

[2] "DX" refers to the Director's Exhibits; "CX" refers to Claimant's exhibits; "EX" refers to Employer's exhibits; and "Tr." refers to the transcript of the November 18, 2004, hearing.

Applicable Law

In order to establish entitlement to benefits under Part 718, Claimant must establish by a preponderance of the evidence: (1) that he suffers from pneumoconiosis, (2) that the pneumoconiosis arose out of coal mine employment, (3) that he is totally disabled, and (4) that his total disability is caused by pneumoconiosis. §§ 725.202, 718.201 – 718.204.

Subsequent Claim

This claim is a "subsequent" claim, as it was filed more than one year after a prior denial. §725.309. In order to establish that he is entitled to benefits pursuant to a subsequent claim, Claimant must prove that "one of the applicable conditions of entitlement … has changed since the date upon which the order denying the prior claim became final." The applicable conditions of entitlement are limited to those conditions upon which the prior denial was based. § 725.309(d)(2). If Claimant has established a change in an applicable condition of entitlement, the entire record must be reviewed to determine whether he is entitled to benefits. Previously, it was established that Claimant was a coal miner for twelve years and that his last coal mine employer was Jim Walter Resources, Inc., but Claimant did not establish the existence of pneumoconiosis arising out of coal mine employment or total disability due to pneumoconiosis.

Medical Evidence

X-ray reports

Exhibit No.	**Date of X-ray**	**Physician/ Qualifications**	**Interpretation**
DX 10	10/28/02	Ballard, B, BCR[3]	0/1 s/t
DX 10	10/28/02	Goldstein, B	Quality 2
DX 11	10/28/02	Goldstein, B	No pneumo
EX 1	9/25/03	Hasson[4]	No pneumo

[3] "B" denotes a physician who was a certified B-reader at the time of the x-ray reading. A B-reader is a radiologist who has demonstrated proficiency in assessing and classifying x-ray evidence of pneumoconiosis, as approved by the National Institute of Occupational Safety & Health, U.S. Public Health Service pursuant to 42 C.F.R. § 37.51 (1982). "BCR" denotes a physician who has been certified in radiology or diagnostic roentgenology by the American Board of Radiology, Inc., or the American Osteopathic Association. § 727.206(b)(2)(iii).

Exhibit No.	Date of X-ray	Physician/ Qualifications	Interpretation
EX 2	12/29/03	Goldstein, B	No pneumo

B. Pulmonary Function Studies

Exh.	Physician	Date	Age/Ht.	FEV_1	FVC	MVV	FEV_1/ FVC	Tracings	Qualify
DX 10	Hawkins	10/28/02	71/71"	2.25	2.94	69	77%	Yes	No
EX 1	Hasson	9/24/03	72/71"	2.21	2.74	60	81%	Yes	No
EX 2	Goldstein	12/29/03	72/70"	2.39	2.40	32	100%	Yes	No

C. Arterial Blood Gas Studies

Exh.	Physician	Date	pCO_2	pO_2	Rest./ Exercise	Qualify
DX 10	Hawkins	10/28/02	44 42	87 88	Resting Exercise	No No
EX 1	Hasson	9/24/03	42.9	86.6	Resting	No
EX 2	Goldstein	12/29/03	36	86	Resting	No

D. Narrative Medical Evidence

Dr. Claybon

Dr. Ernest A. Claybon, an experienced private practicing family physician, submitted an undated report, addressed to the U.S. Department of Labor, wherein he stated that there was a diagnosis of pneumoconiosis in 1988. (CX 1). Dr. Claybon explained that Claimant had a long history of severe chronic obstructive pulmonary lung disease, congestive heart disease, severe pulmonary fibrosis and chronic bronchitis. Based on Claimant's work history, his smoking

[4] Dr. Hasson's x-ray reading is in his written report regarding his September 25, 2003, examination of Claimant. This tribunal has taken judicial notice of Dr. Hasson's professional medical qualifications. He was not a B-reader at the time he examined the Claimant and read the pertinent x-ray. His board-certified in internal medicine and the subspecialties of critical care medicine and pulmonary disease. B-reader qualifications are recorded on the B-reader List published on the website of the Office of Administrative Law Judges at http://www.oalj.dol.gov.public/blalung/refrnc/bread3.htm. Board-certification is reflected in the listings by the American Board of Medical specialties at www.abms.org. *See Maddaleni v. Pittsburg & Midway Coal Co.*, 14 BLR 1-135 (1999).

history and his long medical history of severe chronic obstructive pulmonary disease, congestive heart disease and chronic bronchitis, Dr. Claybon was "reasonably certain" that the diagnosed conditions were caused by coal dust exposure. It was also his opinion that Claimant's ten years of smoking did not contribute to the severe chronic obstructive pulmonary disease, congestive heart disease, severe pulmonary fibrosis and chronic bronchitis. Dr. Claybon asserted that, even assuming coal dust had nothing to do with the cause of Claimant's severe chronic obstructive pulmonary disease, congestive heart disease, severe pulmonary fibrosis and chronic bronchitis, he would still be reasonably certain that coal dust exposure contributed to the severity of those diseases.

Dr. Claybon stated that he based his opinion on "manifestation during physical examination as well[sic] x-rays and medical history." He opined that Claimant was totally disabled from the diagnosed conditions. Attached to his opinion were what he termed medical records "to support [his] conclusions," those being his treatment records from 2003 and 2004. Dr. Claybon asserted that medical studies have proven that chronic obstructive lung disease causes heart problems, but he did not identify those studies. Dr. Claybon opined that Claimant's employment in underground coal mines caused Claimant's congestive heart failure. Dr. Claybon's records included a CT scan of the chest taken on November 25, 2003, which was read by Dr. Schwartz as showing a stable noncalcified nodule in the left lung base and area of parenchymal density in the right mid lung. Many of the records submitted by Dr. Claybon are handwritten records and, for the most part, illegible. COPD and CHD were noted in those records.

Dr. Hawkins

On October 28, 2002, Dr. Jeffrey Hawkins examined Claimant. (DX 10). Dr. Hawkins listed coal mine employment from 1975 to 1987, and a cigarette smoking history of half a pack per day from 1950 to 1960/65. Dr. Hawkins recorded that Claimant suffered from chronic back pain and had undergone several hospitalizations. Claimant's chief complaints included sputum, wheezing, dyspnea, cough, orthopnea and paroxysmal nocturnal dyspnea. Based upon his examination, which included the taking of a chest x-ray, pulmonary function testing and blood gas studies, Dr. Hawkins diagnosed reactive airways disease (asthmatic bronchitis), noting Claimant's intermittent wheezing, exertional dyspnea and cough. He found the condition to be due to atopic disease/variable environmental triggers. In his opinion, Claimant had a mild impairment and he could not perform manual labor with exertional dyspnea and should avoid further exposure to chemicals, dust and fumes. Upon reviewing his objective laboratory testing, Dr. Hawkins found that the pulmonary function tests showed no airflow obstruction and mild decrease in the FVC. The arterial blood gas testing revealed adequate resting and exertional gas exchange. Dr. Haskins is board-certified in internal medicine and pulmonary disease.

Dr. Hasson

Dr. Jack H. Hasson submitted a report dated September 25, 2003. (EX 1). Dr. Hasson is board-certified in internal medicine and pulmonary disease. Dr. Hasson took histories and conducted a physical examination which included the taking of a chest x-ray, pulmonary function testing and blood gas studies. He recorded twelve years of underground coal mining

and a smoking history of one-half to one-quarter packs of cigarettes per day for fifteen years ending in 1975. Based upon his examination, Dr. Hasson found asthmatic bronchitis by history with no pulmonary impairment, coronary artery disease post stent with continued chest pain, hypertensive cardiovascular disease, reflux esophagitis and lumbar disk surgery in the past. Dr. Hasson concluded that Claimant had no evidence of pneumoconiosis or of a pulmonary impairment.

Dr. Goldstein

Dr. Allan R. Goldstein examined Claimant on December 29, 2003. (EX 2). Dr. Goldstein recorded underground coal mine employment from 1975 to 1987 and a smoking history "in the past." Based upon his examination, which included the taking of a chest x-ray, pulmonary function testing and blood gas studies, Dr. Goldstein found that Claimant suffered from dyspnea that was probably a combination of cardiac disease and deconditioning. He did not believe that Claimant suffered from pneumoconiosis, but did find that there was a question as to whether Claimant might have some element of smoking-related lung disease. Dr. Goldstein also noted that Claimant's x-ray suggested some hyperinflation, which would "make one wonder about the possibility of obstructive airways disease." Dr. Goldstein is board-certified in internal medicine and pulmonary disease.

Pneumoconiosis and Causation

Section 718.201 defines pneumoconiosis as follows:

(a) For the purposes of the Act, “pneumoconiosis” means a chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment. This definition includes both medical, or “clinical”, pneumoconiosis and statutory, or “legal”, pneumoconiosis.

(1) Clinical Pneumoconiosis. “Clinical pneumoconiosis” consists of those diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment. This definition includes, but is not limited to, coal workers’ pneumoconiosis, anthracosilicosis, anthracosis, anthrosilicosis, massive pulmonary fibrosis, silicosis or silicotuberculosis, arising out of coal mine employment.

(2) Legal Pneumoconiosis. “Legal pneumoconiosis” includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. This definition includes, but is not limited to, any chronic restrictive or obstructive pulmonary disease arising out of coal mine employment.

(b) For purposes of this section, a disease "arising out of coal mine employment" includes any chronic pulmonary disease or respiratory or pulmonary impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment.

(c) For purposes of this definition, "pneumoconiosis" is recognized as a latent and progressive disease which may first become detectable only after the cessation of coal mine dust exposure.

Section 718.202(a) provides four methods for determining the existence of pneumoconiosis. Under § 718.202(a)(1), a finding of pneumoconiosis may be based upon x-ray evidence. The record contains four interpretations of three chest x-rays, none of which was positive for pneumoconiosis. Thus, the existence of pneumoconiosis has not been established pursuant to § 718.202(a)(1). Because there is no biopsy or autopsy evidence of record pneumoconiosis has not been established pursuant to § 718.202(a)(2).

The presumptions under § 718.202(a)(3), are unavailable because there is no evidence of complicated pneumoconiosis under § 718.304; the presumptions under §§ 718.305 and 718.306 are inapplicable because they only apply to claims that were filed before January 1, 1982, and by survivors prior to June 30, 1982, respectively.

Under § 718.202(a)(4), a claimant may establish the existence of the disease if a physician's reasoned opinion supports the presence of the disease based on objective medical evidence and an adequate rationale. *See Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-89 (1993); *Taylor v. Director, OWCP*, 1-22, 1-24 (1986). The weight given to each medical opinion should be in proportion to the quality of its documented and reasoned conclusions.

A "documented" opinion is one that sets forth the clinical findings, observations, facts and other data on which the physician based the diagnosis. *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984). A report is adequately documented if it is based on items such as a physical examination, symptoms and patient's history. *See Hoffman v. B & G Construction Co.*, 8 BLR 1-65 (1985); *Hess v. Clinchfield Coal Co.*, 7 BLR 1-295 (1984); *Buffalo v. Director*, OWCP, 6 BLR 1-1164, 1-1166 (1984); *Gomola v. Manor Mining and Contracting Corp*., 2 BLR 1-130 (1979).

A "reasoned" opinion is one in which the underlying documentation and data are adequate to support the physician's conclusions. *See Fields, supra*. The determination that a medical opinion is "reasoned" and "documented" is for this tribunal to determine. *See Clark v. Karst-Robbins Coal Co.*, 12 B.L.R. 1-149 (1989)(en banc). An unsupported medical conclusion is not a reasoned diagnosis. *Fuller v. Gibraltar Corp.*, 6 B.L.R. 1-1292 (1984). *See also Phillips v. Director, OWCP*, 768 F.2d 982 (8th Cir. 1985); *Smith v. Eastern Coal Co.*, 6 B.L.R. 1-1130 (1984); *Duke v. Director, OWCP*, 6 B.L.R. 1-673 (1983) (a report is properly discredited where the physician does not explain how underlying documentation supports his or her diagnosis); *Waxman v. Pittsburgh & Midway Coal Co.*, 4 B.L.R. 1-601 (1982).

The qualifications of the physicians are relevant in assessing the respective probative values to which their opinions are entitled. *Burns v. Director, OWCP*, 7 B.L.R. 1-597, 1-599 (1984). More weight may be accorded to the conclusions of a treating physician as he or she is more likely to be familiar with the miner's condition than a physician who examines him episodically. *Onderko v. Director, OWCP*, 14 B.L.R. 1-2, 1-6 (1989). However, a judge "is not required to accord greater weight to the opinion of a physician based solely on his status as claimant's treating physician. Rather, this is one factor which may be taken into consideration in . . . weighing . . . the medical evidence . . ." *Tedesco v. Director, OWCP*, 18 B.L.R. 1-103, 1-105 (1994).

The evidence of record includes the reports of Drs. Hawkins, Hasson, Claybon and Goldstein, as well as treatment records of Dr. Claybon. Of these physicians, Drs. Goldstein, Hasson and Hawkins found that coal worker's pneumoconiosis was not present. These physicians are pulmonary specialists. By contrast, Dr. Claybon found the miner to be suffering from coal worker's pneumoconiosis, stating that he relied upon Claimant's history of working in the underground coal mines for approximately twelve years, his smoking history and medical history in reaching this opinion. While Dr. Claybon was the miner's treating physician, his opinion is lacking in reasoning or objective evidentiary support. He is a family physician without qualifications as a board-certified specialist in internal medicine or pulmonary medicine. He pointed to no objective laboratory data to support his findings, and he did not otherwise adequately explain those findings. His treatment records also provide no reasoned medical opinion supporting a diagnosis of pneumoconiosis. Thus, his opinion is not as well-reasoned or well-documented as those of Drs. Goldstein, Hawkins and Hasson, who are pulmonary specialists, and whose medical reports negate the existence of pneumoconiosis. The absence of pneumoconiosis or any other respiratory or pulmonary impairment arising out of coal mine work is supported by the negative x-ray evidence and the objective laboratory data, including the CT scan and treatment records.[5]

Therefore, the weight of the medical opinions of record does not establish that the Claimant has pneumoconiosis pursuant to § 718.202(a)(4). Claimant has not proved by a preponderance of the evidence the existence of pneumoconiosis under any of the methods provided by § 718.202(a).

Total Disability Due to Pneumoconiosis

Even if the evidence were deemed to establish the existence of pneumoconiosis, Claimant has not proved that he has a totally disabling respiratory impairment due to pneumoconiosis. A miner is considered totally disabled if his pulmonary or respiratory condition prevents him from performing his usual coal mine work or comparable work. § 718.204(b)(1). Non-respiratory and

[5] In this respect, it is also to be noted that Dr. Claybon indicates Claimant has suffered from pneumoconiosis since 1988. He provides no medical evidence in support of this finding, which finding is in direct conflict with that reached by the Board in 1994, after a review of all the medical evidence of record and the determinations made in Claimant's subsequent applications in 1996 and 2000.

non-pulmonary impairments are not relevant to a finding of total disability. *See Beatty v. Danri Corp.*, 16 BLR 1-11, 1-15 (1991). Section 718.204(b)(2) provides the criteria for establishing total disability, pursuant to which the evidence must be evaluated under each subsection and then weighed together with both like and unlike evidence, to determine whether Claimant has established total respiratory disability by a preponderance of the evidence. *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1987).

Under §§ 718.204(b)(2)(i) and (b)(2)(ii), total disability may be established by qualifying pulmonary function tests or arterial blood gas studies.[6] The discrepancy in the height attributed to Claimant is resolved by utilizing the average height reported for Claimant, which is 70.5 inches. *See Protopappas v. Director, OWCP*, 6 B.L.R. 1- 221 (1983); s*ee also Toler v. Eastern Assoc. Coal Co.*, 43 F.3d 109 (4th Cir. 1995). Since none of the pulmonary function studies of record produced qualifying values, Claimant has not established total disability pursuant to § 718.204(b)(i). None of the blood gas studies of record produced qualifying values which would prove disability under § 718.204(b)(ii). *See Sturnick v. Consolidation Coal Co.*, 2 B.L.R. 1-972 (1980). The record contains no evidence of cor pulmonale with right-sided congestive heart failure under § 718.204(b)(2)(iii).

Although Claimant has not established total disability under § 718.204(b)(2)(i), (ii), or (iii), § 718.204(b)(2)(iv) provides that total disability may be established if a physician exercising reasoned medical judgment, based on medically acceptable clinical and laboratory diagnostic techniques, concludes that a respiratory or pulmonary impairment prevents the miner from engaging in his usual coal mine work or comparable and gainful work.

In the instant case, Dr. Claybon found the miner to be totally disabled. Dr. Claybon's opinion, however, is not sufficiently reasoned and documented to be persuasive. Dr. Hasson found no pulmonary impairment. Dr. Hawkins found a mild impairment and Dr. Goldstein found dyspnea but did not assess disability, although he agreed with the finding of Dr. Hawkins, who opined that Claimant suffered from a restrictive defect. Though Dr. Hawkins found only a mild impairment, he concluded that Claimant could not perform manual labor with exertional dyspnea and cough, and that Claimant should avoid further exposure to dust, chemicals and fumes. While the latter statement is not equivalent to a finding of total disability, the former is tantamount to a finding of total disability, given Claimant's prior work as a laborer in underground coal mines. (Tr. 15). *See White v. New Coal Co.,* 23 BLR 1-1 (2004). Though Dr. Hawkins concluded that Claimant cannot perform manual labor, his opinion is not persuasive because he did not adequately explain the rationale behind his finding on this issue, given that the pulmonary function and blood gas tests he performed on the Claimant produced non-qualifying results. The opinions of Drs. Hasson and Goldstein do not establish total disability. Dr. Hasson's report is supported by the objective laboratory data and by the report of Dr. Goldstein. Dr. Goldstein's report does not specifically render an assessment regarding disability, but his laboratory testing supports the findings rendered by Dr. Hasson, as does his report. Thus, the medical opinion evidence does not satisfy Claimant's burden of proof. Accordingly, Claimant has not established

[6]A qualifying pulmonary function study or arterial blood gas study yields values that are equal to or less than the applicable table values found in Appendices B and C of Part 718. § 718.204(b)(2)(i) and (ii). A non-qualifying test produces results that exceed the table values.

the existence of a disabling pulmonary impairment, or total disability pursuant to § 718.204(b)(iv).

Claimant has not established total disability due to pneumoconiosis pursuant to § 718.204(c)(1). Total disability due to pneumoconiosis requires proof that pneumoconiosis, as defined in § 718.201, is a substantially contributing cause of the miner's totally disabling respiratory or pulmonary impairment. "Substantially contributing cause" is defined as having a "material adverse effect on the miner's respiratory or pulmonary condition" or as "materially worsen[ing] a totally disabling respiratory or pulmonary impairment which is caused by a disease or exposure unrelated to coal mine employment." § 718.204(c)(1)(i) and (ii). Absent a showing of cor pulmonale or that one of the presumptions of § 718.305 is properly invoked, total disability due to pneumoconiosis must be established by documented and reasoned medical opinions. § 718.204(c)(2). The United States Court of Appeals for the Sixth Circuit has declared in this regard that pneumoconiosis must be more than a "de minimus or infinitesimal contribution" to the miner's total disability. *See Peabody Coal Co. v. Smith*, 127 F.3d 504, 506-507 (6th Cir. 1997).

There is no evidence of cor pulmonale or presumption under § 718.304. The physicians' documented and reasoned medical reports do not establish that any pulmonary disability suffered by the miner is the result of coal mine dust exposure. Dr. Claybon's report is neither well-reasoned nor well-documented; the other medical opinions are negative as to pneumoconiosis. Dr. Goldstein made no assessment regarding disability, Dr. Hasson found no pulmonary impairment, and Dr. Hawkins found an impairment, but did not find it to be the result of coal worker's pneumoconiosis or coal mine dust exposure. Therefore, Claimant has not proved that he is totally disabled due to pneumoconiosis.

Conclusion

The evidence does not establish the existence of coal worker's pneumoconiosis or a totally disabling respiratory impairment due thereto. No element of entitlement previously adjudicated against Claimant has been established. Therefore, the claim of Oscar L. Bryant must be denied.

Attorney's Fees

The award of attorney's fees under the Act is permitted only in cases in which the claimant is found to be entitled to benefits. Section 28 of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 928, as incorporated into the Black Lung Benefits Act, 30 U.S.C. § 932. Since benefits are not awarded in this case, the Act prohibits charging any fee to the Claimant for services rendered to him in pursuit of this claim.

ORDER

The claim of Oscar L. Bryant for benefits under the Act is denied.

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EDWARD TERHUNE MILLER
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: If you are dissatisfied with the administrative law judge's decision, you may file an appeal with the Benefits Review Board ("Board"). To be timely, your appeal must be filed with the Board within thirty (30) days from the date on which the administrative law judge's decision is filed with the district director's office. *See* 20 C.F.R. §§ 725.458 and 725.459. The address of the Board is: Benefits Review Board, U.S. Department of Labor, P.O. Box 37601, Washington, DC 20013-7601. Your appeal is considered filed on the date it is received in the Office of the Clerk of the Board, unless the appeal is sent by mail and the Board determines that the U.S. Postal Service postmark, or other reliable evidence establishing the mailing date, may be used. *See* 20 C.F.R. § 802.207. Once an appeal is filed, all inquiries and correspondence should be directed to the Board.

After receipt of an appeal, the Board will issue a notice to all parties acknowledging receipt of the appeal and advising them as to any further action needed.

At the time you file an appeal with the Board, you must also send a copy of the appeal letter to Donald S. Shire, Associate Solicitor, Black Lung and Longshore Legal Services, U.S. Department of Labor, 200 Constitution Ave., NW, Room N-2117, Washington, DC 20210. *See* 20 C.F.R. § 725.481.

If an appeal is not timely filed with the Board, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 20 C.F.R. § 725.479(a).